IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Ex.SA.No. 14 of 2006()

AS.95/2002 of III ADDL. DISTRICT COURT, THIRUVANANTHAPURAM
OS.43/1969 of III ADDL.M.C.,THIRUVANANTHAPURAM
(EA. 1000 /2001)
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: APPELLANT/APPELLANT/PETITIONER.

SYAMALA, D/O.SARADA, RESIDING AT THUMBRA
MALE VEEDU, PANANGODE DESOM, VENGANOOR VILLAGE,
THIRUVANANATHAPURAM.

BY ADV. SRI.M.R.ANANDAKUTTAN
SRI.B.SATHIQ
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS: RESPONDENTS/COUNTER PETITIONERS
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1. KUNJI AMMA NAUKUTTY AMMA,
RESIDINT AT VAZHAVILAKATHU VEEDU, MUKKOLAKKAL,
SREEVARAHAM FROM PANAYIL PUTHEN VEEDU,
NETTATHARA MURI, THIRUVANANATHAPURAM.

2. NANUKUTTY AMMA ANANDAVALLY AMMA
----DO---- ----DO---.

3. NANUKUTTY AMMA CHANDRAMATHY AMMA,----DO-
---DO--- ----DO---,

4. NARAYANAN PILLAI SREEKUMARAN NAIR,
RESIDING AT --DO-- --DO--.

5. KUNJI AMMA THANKAMMA,
RESIDING AT PANAYIL PUTHEN VEEDU OF -DO--.

6. MADHAVAN PILLAI GOPALAKRISHNAN NAIR,
RESIDING AT ---DO---DO--.

7. MADHAVAN PILLAI RAJENDRAN NAIR OF
---DO--.

8. VELAYUDHAN PILLAI SIVASANKARA PILLAI,
RESIDINT AT THUMBRA VEEDU, PANANGAODE DESOM,
THIRUVALLAM VILLAGE, THIRUVANANTHAPURAM.

9. VELAYUDHAN PILLAI NARAYANAN PILLAI OF
---DO--- ---DO---.

10. VELAYUDHAN PILLAI DAMODARAN PILLAI,
OF ---DO---- ---DO---.

11. V.S.SUKUMARAN NAIR, VASUDASARMA,
KALATHUMMAL VILLAGE, KATTAKADA.

12. SIVASANKARA PILLAI GOPALAKRISHNAN NAIR,
TC.18/1605, VALIYAVILA, ARAMADA VILLAGE,
THIRUVANANTHAPURAM.

13. M.LALITHA BAI AMMA, SIVA MANDIRAM,
NEMOM VILLAGE, PAPPANAMCODE,
THIRUVANANANTHPAURAM.

14. M.PANKAJAKSHY AMMA, MANALIL VEEDU,
KALIYOOR DESOM, NEMOM VILLAGE,
THIRUVANANTHAPURAM.

15. SIVASANKARA PILLAI, BHASKARAN NAIR,
AMBIKA SADANAM, KODUNGANOOR DESOM,
ANCHAMADA VILLAGE,
THIRUVANANTHAPURAM.

16. V.SAROJINI AMMA, THUMBARA VEEDU,
PANAKKODE DESOM, THIRUVALLAM VILLAGE,
THIRUVANANTHAPURAM.

17. D.SADASIVAN NAIR, RESIDING AT -DO-.

18. D.MANIKANTAN NAIR, OF -DO- -DO-.

19. S.PANKAJAKSHY AMMA OF -DO-

20. D.SUKUMARAN NAIR, OF -D0- -DO-.

21. D.RAJASEKHARAN NAIR OF -DO- -DO-.

22. D.VIJAYAKUMARANNAIR OF -DO-.

23. S.PADMAVATHY AMMA OF -DO-.

24. S.REMADEVI AMMA OF -DO-.

25. KALI AMMA PILLAI GOWRI PILLAI,

RESIDING AT PADMAVILASOM BUNGLOW,
PAANGODE DESOM, THIRUVALLAM VILLAGE,
THIRUVANANTHAPURAM.

26. ADICHAPILLAI PARAMWSARA PILLAI,
THUMBARA VEEDU, RESIDING AT -DO-.

27. K.RAMAKRISHNA PILLAI, MURUKKAMMOTHU
VEEDU, AMABALATHARA, THIRUVANANTHAPURAM.

28. JANAKI AMMA CHINNAMMA, PANAYIL VEEDU
OF -D0-.

29. CHINNAMMA SARADA OF --D0-.

30. KARTHIYAYANI AMMA PANKI AMMA,
RESIDING AT KUNNUVILA PUTHEN VEEDU,
MAHILA MANDIRAM MUKKU, POOJAPPURA,
RESIDING AT -DO-.

31. PARAMWSARAN PILLAI KRISHNANKUTTY NAIR OF
-DO-- ----DO---.

32. PARAMWSARA PILLAI THANKAPPAN NAIR
OF ---DO-.

33. PANKIAMMA PILLAI SARASAMMA OF -DO-.

34. SARSAMMA VIMALAMMA OF --DO-.

35. SARASAMMA RAMA AMMA OF -DO-.

36. PANKIAMMA SARADAMMA OF -DO-.

37. PANKIAMMA DEVAKI AMMA OF -DO-.

38. PANKIAMMA PADMINI AMMA OF -DO-.

39. PANKIAMMA GIRIJA AMMA OF -DO-.

40. KOCHAPPAN PILLAI KOCHU KRISHNA PILLAI,
PRISON COMPOUND, POOJAPPURA FROM
PANAYIL VEEDU, MUTTATHARA, THIRUVANANTHAPURAM.

41. GOWRI AMMA JAGADAMMA OF -DO-.

42. KESAVA PILLAI GOPALAKRISHNA NAIR OF -DO-

43. KESAVA PILLAI MADHAVAN NAIR OF -DO-.

44. JAGADAMMA RADHAMMA OF -DO-.

45. JAGADAMMA SANTHAMMA OF -DO-.

46. JAGADAMMA MANI OF -DO-.

47. JAGADAMMA SARASWATHI AMMA OF -DO-.

48. GOWRI AMMA KAMALAMMA, RESIDING AT SASTHAMVILAKATHU VEEDU OF -DO-.

49. KAMALAMMA PANKAJASHY AMMA OF -DO-.

50. CHELLAPPAN PILLAI GOPALAKRISHNAN NAIR, RESIDING AT DO.

51. KAMALAMMA SARASWATHY AMMA OF DO-.

52. KAMALAMMA LEELAKUMARI OF -DO-.

53. KAMALAMMA INDIRA KUMARI OF -DO-.

54. CHELLAPPAN PILLAI SREEDHARAN NAIR OF -D0

55. GOVINDA PILLAI BHASKARAN PILLAI OF -DO-.

56. GOVINDA PILLAI PARAMESWARAN OF -DO-.

57. GOVINDA PILLAI KRISHNAN NAIR OF -DO-.

58. KALYANI AMMA THANKAMMA OF -DO.

59. GOVINDA PILLAI SANKARAN NAIR OF -DO-.

60. ANANDAKRISHNA PILLAI MADHANVAN PILLAI OF -DO-.

61. ANANDAKRISHNAN PILLAI NARAYANA PILLAI OF -DO-.

62. ANANDAKRISHNAN PILLAIBHASKARAN PILLAI OF -DO-.

63. ANANDAKRISHNA PILLAI APPUKUTTAN PILLAI -DO-.

64. LAKSHMIKUTTY AMMA PARUKUTTY AMMA OF DO.

65. VELAPPAN NAIR THULASIDHARAN NAIR OF DO.

66. VELAPPAN NAIR MOHANAN NAIR OF -DO-.

67. LEKSHMIKUTTY AMMA KUNJAMMA OF -DO-.

68. KRISHNA PILLAI PARAMWSWARAN NAIR, PADMAVILASOM BUNGLOW, THIRUVALLAM VILLAGE, THIRUVANANTHAPURAM.

69. KRISHNA PILLAI GOPINATHAN NAIR OF -DO-.

70. GOWRI PILLA SAROJINI AMMA OF -DO-.

BY ADV.SRI.S.D.ASOKAN FOR R17 (CAVEATOR)

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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Ex.S.A. NO. 14 OF 2006

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Dated this the 16th day of October, 2007

JUDGMENT

Appellant is the claim petitioner in E.A.1000/2001 in O.S.43/1969 before Additional Munsiff Court, Thiruvananthapuram. In O.S.43/1969 a preliminary decree was passed on 6.3.1974 which was challenged in A.S.611/1974 and finally settled as per judgment of this court dated 21.1.1983 in S.A.302/1978. A final decree was passed thereafter. Respondents to whom the properties were allotted sought delivery of the property. At that time appellant filed the application under Rule 99 of Order XX1 of Code of Civil Procedure contending that 60 cents in survey No.257/4A & 6A corresponding R.S.No.498/2 of Venganoor Village originally has been in the possession of Chathan grandfather from 1940 and after the death of Chathan it devolved on his sons Chathan Kuttan and Chathan Chellan and appellant is the daughter of

Chathan Kuttan and after the death of Chathan Chellan properties were divided in 1995 under Ext.A1 partition deed whereunder H schedule property was allotted to appellant and she was unaware of the suit or decree and on 12.10.2001 when Amin came for effecting delivery she came to know about the decree and the decree holders are not entitled to take delivery of the property.

2. Respondents opposed the application contending that Chathan the father of appellant had no right or possession of the property and under Ext.A1 appellant did not derive any right and the petition was filed only to protract the delivery and therefore petition is only to be dismissed. Executing Court on the evidence of Pws.1 and 2 and Exts.A1 to A6, dismissed the application holding that there is no evidence to prove that the grandfather of the appellant has been in possession of the property so as to be divided between the appellant and other legal heirs under Ext.A1 and it was admitted by appellant at the time of the

evidence that appellant had filed O.S.216/1998 before the court against some of the decree holders seeking a decree for injunction claiming right under Ext.A1 partition deed and that suit was dismissed and therefore appellant is not entitled to cause any obstruction to the delivery. Appellant challenged the order before District Court, Thiruvananthapuram in A.S.95/2002. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel is that appellant had filed O.S. No. 1067/1995 seeking a declaration of title and possession of the entire 1.40 acres including 60 cents involved in this petition contending that she has title to the property under Ext.A1 against some of the judgment debtors in the final decree and Ext.A5 decree was

obtained and in the light of Ext.A5 decree, courts below should have found that appellant has right and title to the property and the findings of courts below are unsustainable. Learned counsel also argued that though, when the claim petition was filed, no appeal was preferred against O.S.216/1998. Subsequently an appeal was filed and in such circumstance for the reason that O.S.216/1998 was dismissed, courts below should not have dismissed the claim petition. Learned counsel also argued that the executing court should have independently decided the question whether appellant has right over the property.

5. On hearing the learned counsel, I do not find any substantial question of law involved in this appeal.

6. O.S.43/1969 was filed even before coming into force of Kerla Land Reforms Act 35 of 1969 on 1.1.1970. Suit was contested and the preliminary decree was finally confirmed by this court only on 21.1.1983. Case of appellant is that her

grandfather obtained the property in 1940 and since then grandfather was in possession and after the death of the grandfather his right devolved on his two sons including father of the appellant and after the death of the sons, their children divided the property under Ext.A1 and appellant has thus right and possession to the property. Though it was contended that Chathan, the father has been in possession of property from 1940, it was not even mentioned how Chathan obtained the property, whether as a lessee, licensee or trespassor. There was no case that the jenm right belongs to Chathan. Apart from Ext.A1 partition deed, nothing was produced to show that there was any entrustment to Chathan or to show that Chathan was in possession of the property from 1940 or at any time before the institution of O.S.43/1969. Even according to appellant, Chathan did not obtain possession of the property after 1969, when O.S.43/1969 was filed . Therefore possession of Chathan, if at all, could have been only prior to 1969. Apart from examining

PW2, a neighbour, no other evidence was adduced to prove that Chathan was in possession of the property. Courts below on appreciating the evidence of PW2 found that his evidence is unreliable. Case of PW1 was that Chathan obtained the property 40 years back and what was deposed by PW2 was that Chathan has been residing in the building and the building was aged more than 100 years. Courts below has given cogent reasons for not relying on the evidence of PW2. If in fact Chathan was in possession of the property, he would have paid basic tax or there would have been some documentary evidence to establish the possession. It is absolutely clear from evidence that after the preliminary decree was confirmed by this court, Ext.A1 partition deed was entered into claiming right over the property. Moreover, setting up right under Ext.A1 O.S.216/1998 was filed by appellant seeking a decree for injunction which was admittedly dismissed on 22.10.1999. Courts below found that appellant had even applied for certified

copy of the judgment only after the filing of the application. It was for these reasons, it was found that appellant did not have any right to obstruct the delivery. In such circumstance, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006